

Docket No.: SS-102U
Patent Appl.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No.:	10/765,692)	Examiner: Olson, M.
)	
Title:	PERSONAL LOAD BEARING DEVICE)	Art Unit: 3727
)	
Inventor:	Licsko, A.)	
)	
Filed:	1/26/04)	
)	

RESPONSE TO OFFICE ACTION MAILED 9/7/06

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I. The Examiner's Objection and Rejections

On September 7, 2006, the Examiner mailed an office action objecting to the Specification for inappropriately capitalizing the word "Figures." The Examiner rejected Claim 1, 2 and 4 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent no. 4,211,219 issued to Alvey ("Alvey") in view of U.S. Patent no. 5,826,763 issued to Roberts ("Roberts"). The Examiner further rejected Claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Alvey in view of Roberts in further view of U.S. Patent no. 5,511,707 issued to Reichert ("Reichert"). Finally, the Examiner rejected Claims 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Alvey in view of Roberts in further view of U.S. Patent no. 4,901,898 ("Colombo").

II. Applicant's Response

A. Objections to Specification

Applicant has amended the Specification to correct the capitalization error. Applicant respectfully submits that such objection is overcome by such amendments.

B. The Alvey Reference

Applicant respectfully submits that Alvey does not disclose a vertical member and cargo support member being integrally formed with each other. Moreover, as will be discussed below, Applicant submits that there is no suggestion to combine the Alvey reference with the Roberts reference.

As understood by Applicant, an object of the Alvey reference is to “become an extension of the pelvic girdle to support the weights by means of the elbow . . .” (Alvey, col. 1, lns. 63-67). Alvey continues by stating that the invention “serves as a rest for each elbow.” (Alvey, col. 1, lns. 4-7). “Each brace member 56 is rather thick or wide so as to serve as a rest for the elbow 40 when heavy weights are being lifted or carried about.” (Alvey, col., lns. 55-62). As shown in FIG. 2 provides the best representation of how the invention according to Alvey is utilized. As shown in phantom lines, the elbows rest upon the surface 62 in an inward manner. As further shown in FIG. 4, the invention made according to Alvey may be directly strapped to the elbow. (Alvey, FIG. 4). Thus, one of the primary objects of the Alvey reference requires that the top surface 62 be substantially planar and/or shaped in a manner so as to accommodate a user's elbow thereupon.

C. The Roberts Reference

Applicant respectfully submits that the Roberts reference fails to disclose a vertical member and cargo support member being integrally formed with each other. Applicant further submits that the Roberts reference is an inferior design that suffers from mechanical flaws overcome by the present invention.

As understood by Applicant, Roberts discloses a device having a bracket 26 that defines a vertical slot 27 with an arm 15 that is mounted to the bracket 26 via pins 16 extending from the arm and retained in the slots 18. As shown in FIGS. 4A, 4B, 4C, and 4D, the arm 15 may be capable of swinging outward away from the bracket. While Applicant recognizes that such a design provides a load-bearing surface for wearers, it suffers from some severe disadvantages that are overcome by the present invention.

Applicant submits that Roberts' use of pins 16 is an inherent design flaw that ultimately provides a weaker design than the present invention. By using such pins 16 to engage the arm 15 to the bracket 26, there is substantial danger of failure. It appears that when relatively heavy loads are placed upon the device, that a large portion of that weight will be distributed to the pins 16. Thus, the stability and weight-bearing ability of the device depends upon the strength of this connection between the pins 16 and the slot 18. Even worse, the slots 18 appear to be configured such that they extend laterally away from the bracket such that excess weight applied closer to the pivot point may dislodge the pin 16 from the slot 18. Clearly, the Roberts design is inferior and suffers from a flaw which, due to its component nature, is susceptible to failure.

Applicant respectfully submits that there is no suggestion to combine the Alvey reference with the Roberts reference. The Examiner cites Roberts as disclosing "the vertical member 26, cargo support member 15 located below the top of the vertical member (figure 4D) forming a guard between the vertical member 26 and the cargo support member 15, and a sleeve 12 for

coupling the device to a belt.” (Office Action, p. 2). The Examiner further stated that it would have been obvious to “include a cargo surface generally below the highest vertical portion so that the load carried contacts two surfaces of the carrier and may be more easily balanced.” (Office action, p.3). Applicant respectfully submits that the Examiner has not cited any technical reason or basis for making such a combination. To modify a prior reference to a render a patent obvious requires that “the prior art suggested the desirability of the modification.” *In re Fritch*, 972 F.2d 1260, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992). The Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent or implied characteristic necessarily flows from the teachings of the prior art reference. *Ex parte Levy*, 17 USPQ 2d 1461, 1464 (BPAI 1990); MPEP § 2112.

D. The Alvey Reference Cannot Be Combined with the Roberts Reference.

Applicant submits that the Alvey reference cannot be combined with the Roberts reference. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to the make proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). A reference is deemed “teach away” when “a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a divergent from the path that was taken by the applicant.” *In re Gurvey*, 27 F.3d 553, 31 USPQ 2d 1130, 1131 (Fed. Cir. 1994).

As described above, a primary object of the Alvey reference is to support the users’ elbows. Thus, Alvey appears to require a substantially planar top surface and/or a surface for accommodating the elbows thereupon. Integrating the bracket and arm in the Roberts reference with the Alvey reference would frustrate a purpose of the Alvey reference because the bracket

and arm would block the top surface and prevent the user from resting their elbows thereupon in the preferred embodiment of the Alvey reference in FIG 2 thereof.

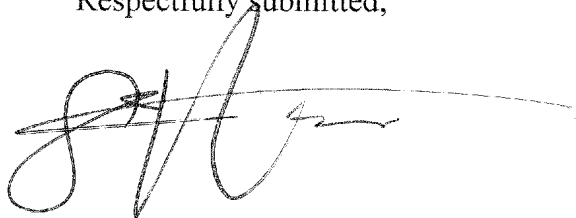
Yet, even assuming *arguendo*, combining Alvey with Roberts would not form the present invention. Combining the vertical member and cargo support from Roberts into the Alvey reference would not integrally form them because the configuration of Roberts requires the use of pins and a slot because rotation of the arm appears to be a key feature of the Roberts invention. By integrally forming the present invention, weight placed upon the device may be distributed evenly throughout, instead of at its weak points, as in Roberts.

Therefore, Applicant respectfully submits that the claims, as amended, not obvious over Alvey in view of Roberts. In the respect that Independent claim 1 is believed to be allowable, its dependent claims 2-6 are also believed to be allowable.

DATED:

3/7/07

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. T. Bang', with a long horizontal flourish extending to the right.

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